

Applicants : Bradley D. Miller et al
Serial No. : 10/667,527
Page No. : 6

REMARKS

The Applicants thank Examiner Lien Ngo for his careful attention to this patent application.

The claims were rejected as anticipated by two references. The MPEP states:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). >"When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) (claim to a system for setting a computer clock to an offset time to address the Year 2000 (Y2K) problem, applicable to records with year date data in "at least one of two-digit, three-digit, or four-digit" representations, was held anticipated by a system that offsets year dates in only two-digit formats). See also MPEP § 2131.02 "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 U.S.C. 102 rejection. See MPEP § 2131.01.

The claims as amended are no longer anticipated by the cited references; nor are the claims obvious in view of the references.

Applicants : Bradley D. Miller et al
Serial No. : 10/667,527
Page No. : 7

Claims 1-19

Claim 1 has been amended to incorporate the intervening claims from 2 to 17 other than claim 7. Claim 7 is now dependent upon claim 1. Claim 18 has been made dependent upon claim 1. The Examiner previously indicated that claims 17-19 were allowable.

Claims 20-29

Claim 20 has been amended to include the element of a tubular frame recited in claim 21. Claim 21 has been cancelled. Claim 25 is now dependent upon claim 20. Claim 22 is now dependent upon claim 29.

The Examiner rejected claims 20 and 21 as anticipated by U.S. Patent 5,899,468 (Apps et al.). The '468 patent does not show a frame or that the frame is enclosed within the lid.

Element 28 of the '468 patent is referred to as an "upper ledge." Col. 2, lines 31. Upper ledge 28 is neither tubular nor enclosed within the lid. Thus, the device shown in the '468 patent does not anticipate amended claim 20.

Claim 20 was also rejected by the Examiner based upon U.S. Design Patent 381, 164 (Prout et al.). The '164 patent does not show a tubular frame enclosed within the lid, and thus does not anticipate amended claim 20.

Claim 25, dependent upon claim 20, states that the handle is integral with the tubular frame. Neither the '164 patent nor '468 patent show a tubular frame, so therefore they also do not show a handle integral with the tubular frame. Additionally, the '164 patent does not show a handle. Figure 4 of the '468 patent shows handle structure 46 clearly attached to the container cart 20 rather than to the lid 40. Thus, neither of these references anticipate claim 25.

Applicants : Bradley D. Miller et al
Serial No. : 10/667,527
Page No. : 8

Similarly, U.S. Patent 4,520,945 (Hodge) does not show a tubular frame or a handle.

As to claim 26, none of the patents show a tubular frame inside the lid, and therefore none of the references show a hinge integral with the tubular frame and extending through the lid. The '468 patent shows a hinge attached to the lid, but not to a frame within the lid. The '164 patent does not show a hinge. The '945 patent shows that the lid pivots along the line indicated by 20. However, there is no hinge integral with a frame enclosed within the lid 14, 16.

Similarly, the plurality of hinges integral with the tubular frame of claim 27 are not shown in the cited references. Since none of the references show a tubular frame or a frame enclosed within the lid, the references if combined would not suggest the claimed device. Thus claim 27 is also allowable.

Claims 28, 29, 22, 23 and 24 are allowable for the reasons stated above.

Claims 30-35

New claim 30 is for a trash container assembly for covering the top of a trash container, the assembly including a lid, and a tubular frame mounted within the lid. Claim 31 adds the element of ribs extending across the top. Claim 32 calls for a lid handle integral with the tubular frame and extending through the lid.

Claim 33 includes a hinge integral with the tubular frame and extending through the lid, the hinge being rotationally attached to the trash container. Claim 34 includes the

Applicants : Bradley D. Miller et al
Serial No. : 10/667,527
Page No. : 9

element of a plurality of hinges integral with the tubular frame and extending through the lid, the plurality of hinges being rotationally attached to the trash container.

Claim 35 requires a lock hole, the lock hole extending through the lid, the lock hole arranged to receive a lock for fastening the lid to the trash container, while the claim 35 states that the lock hole is surrounded by a bracket.

None of these new claims are anticipated by the references cited by the Examiner, nor are the new claims obvious in view of the references cited by the Examiner.

CONCLUSION

In view of the above amendments and these remarks, Applicants respectfully submit that the present application is in condition for allowance. A notice to that effect is earnestly and respectfully requested.

Respectfully submitted,

BRADLEY D. MILLER ET AL

By: Warner Norcross & Judd LLP

J. Ray Wood
Registration No. 36,062
900 Fifth Third Center
11 Lyon Street, N. W.
Grand Rapids, MI 49503-2487
(616) 752-2167